IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.396 OF 2007

Chandrakant Govind Bhide ...Appellant
vs.
Vitthal Sadashiv Pawale & Ors. ...Respondents

Ms Seema Sarnik for the Appellant

CORAM: A.S.OKA,J.
DATE : JUNE 6, 2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the unsuccessful Plaintiff. The Appellant filed a suit in the year 2001 for specific performance of the agreement for sale of the suit property executed on 24th November 1980. The suit has been dismissed by the Trial Court after the full trial. The Appellant claims to be in possession of the suit property on the basis of the suit agreement. One of the grounds on which the suit was dismissed is that the original agreement and the possession receipt was not produced by the Appellant. The Appellant has preferred an Appeal against the said decree which is pending.

2. An Application was made by the Appellant in the Appeal for temporary injunction restraining the Respondents from interfering with his alleged possession over the suit property. The said prayer has been rejected by the impugned order. While rejecting the said prayer, a limited protection has been granted in favour of the Appellant restraining the Respondents from creating any third party interests in respect

of the suit property.

3. After having heard the submissions of the learned Advocate for the Appellant, I find that no case is made out for interfering with the discretionary order passed by the Appellate Court. The suit for specific performance of the agreement for sale of the year 1980 was filed in the year 2001. The suit has been dismissed on merits.

4. In the Appeal, the Appellant made an application for production of the alleged original agreement and the possession receipt by way of additional evidence. The impugned order notes that a suggestion was made by the learned Appellate Judge that the Application for temporary injunction should be considered after consideration of the application for additional evidence. However, a submission was made on behalf of the Appellant that the application for additional evidence should be kept in abeyance and the application for injunction should be heard immediately.

5. On the basis of the available material on record, the Appellate Court has recorded a finding that the Appellant has failed to prove the prima facie case. There is no perversity or illegality in the impugned order. There is no merit in the Appeal. Appeal is accordingly dismissed with no order as to costs.

JUDGE